

IN THE
United States
Circuit Court of Appeals
For the Ninth Circuit.

MARY ROGULJ,

Appellant,

vs.

ALASKA GASTINEAU MINING CO., a Corpora-
tion,

Appellee.

Appeal from the District Court for Alaska, Division No. 1.

REPLY BRIEF OF APPELLANT.

J. H. COBB,
Attorney for Appellant.

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Reply Brief of Appellant.

The learned and exhaustive brief filed by the learned counsel for appellee does not call for reply excepting pages 18, 19 and 20 thereof, dealing with the second and third assignments of error.

From the argument made the learned counsel appears to have misapprehended the gist of these assignments.

The evidence excluded by the Court and complained of in the second assignment was not "to show that her [Mary Rogulj's] address was different from the address given by Peter Rogulj, deceased, in his statement to defendant," etc. Not

at all. *The evidence was offered to show what was the postoffice address of Mary Rogulj furnished to the defendant by Peter Rogulj, and that defendant had failed to mail the notice of Peter's death to that address.*

It was admitted by both sides that Peter Rogulj did furnish plaintiff's postoffice address to the defendant, but there was nothing to show what the postoffice address so furnished was.

It was further admitted that Peter had stated to defendant that Mary Rogulj lived in or at Podaca, Austria, all of which was unquestionably true, but it by no means followed that Podaca, Austria, was Mary Rogulj's postoffice address, or *the* postoffice address given the defendant by Peter Rogulj. In this state of the pleadings and proof, it was certainly competent for the plaintiff to show that the postoffice address of Mary Rogulj was and always had been "Zastroy, Selo Bodaca, Dalmatia, Austria," from which the jury could and should have found that that postoffice address was the one furnished, and defendant having failed to mail the notice correctly addressed, could not maintain the sole defense it offered. If, as a matter of fact, it had been true that Peter Rogulj had given defendant his mother's address as simply Podaca, Austria, it would have been very easy for defendant to show this by producing the written statement of Peter Rogulj in its possession. In short, having obtained an admission of the undoubted facts, first, that Peter Rogulj furnished defendant with his mother's postoffice address, and, second, that he had stated

she lived in Podaca, Austria, defendant attempted to complete its defense by proving that it mailed the notice of Peter's death to that address. It may be conceded that if Peter had in fact given his mother's postoffice address as Podaca, Austria, that defendant could have brought itself within the law so as to avail itself of the defense interposed by mailing the notice to that address, and in that case evidence to show that the postoffice address so given by Peter was the wrong address, would have been incompetent. But that is not the case. Peter gave defendant his mother's postoffice address, which of course means her correct address. Defendant did not mail the notice to that address, or indeed to any postoffice address at all, and its defense therefore failed.

The statement of counsel, beginning near the bottom of page 19 of their brief and continuing on page 20, is also misleading, in that it assumes that the stipulation between counsel contained an admission that Podaca, Austria, was the postoffice address of his mother, given the defendant by Peter Rogulj. The stipulation continues in such admission.

Respectfully submitted,

J. H. COBB,
Attorney for Appellant.

